

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
Plaintiff,  
  
v.

EPHRAIM ROSENBERG,  
JOSEPH NILSEN,  
HADIS NUHANOVIC,  
KRISTEN LECCESE,  
Defendants.

NO. CR20-151RAJ

**STIPULATED MOTION TO  
CONTINUE TRIAL DATE AND  
PRETRIAL MOTIONS DEADLINE**

Noting date: October 13, 2021

The United States of America, by and through undersigned counsel, and the defendants Ephraim Rosenberg, Joseph Nilsen, Hadis Nuhanovic, and Kristen Leccese, by and through their attorneys, respectively, hereby file this *stipulated* motion for a continuance of the trial date and the pretrial motions deadline.

Trial in this matter currently is scheduled for January 10, 2022. Pretrial motions are due no later than November 4, 2021. For the reasons stated below, the parties stipulate and jointly request a continuance of the trial date until at least September 2022, with preference for October 25, 2022, or thereafter as the court has availability. The

parties likewise request that the pretrial motions deadline be extended to a date at least three (3) months prior to the trial date, as described below.<sup>1</sup>

### I. DISCUSSION

The aforementioned parties to this joint motion stipulate and agree as follows:

1. On September 16, 2020, a Grand Jury sitting in this District returned a nine-count Indictment charging the defendants<sup>2</sup> with counts of Conspiracy to Commit Violate the Travel Act and Computer Fraud and Abuse Act, in violation of 18 U.S.C. § 371, Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349, and Wire Fraud, in violation of 18 U.S.C. § 1343.

2. As set forth in records on file, incorporated herein, it is alleged that the defendants participated in a fraud and bribery scheme targeting the Amazon Marketplace and its users. The alleged conduct includes the payment of commercial bribes to Amazon employees and/or contractors in order to gain unauthorized access to Amazon's computer network, obtain beneficial outcomes for certain third-party seller accounts and product listings, take harmful action against competitor seller accounts and product listings, overcome barriers to the sale of restricted items (e.g., hazardous items and regulated substances), and misappropriate internal Amazon data, which included information about the operation of the Marketplace, about particular seller accounts, and Amazon employees and customers.

3. On October 15 and 16, 2020, the above-captioned defendants made their initial appearances in this District and were arraigned on the charges. Each entered pleas of not guilty on all counts. Pursuant to a stipulated motion, trial was scheduled for January 2022.

<sup>1</sup> The parties agree to confer regarding a more detailed briefing schedule, as needed or upon request.

<sup>2</sup> Co-defendant Rohit Kadimisetty entered a guilty plea, pursuant to a plea agreement, and is pending sentencing in this matter. Co-defendant Nishad Kunju, a foreign national also charged in the Indictment, has not appeared in this District and remains a fugitive on such charges.

1           4.       The above-captioned defendants were released subject to a bond pending  
2 trial in this matter. The defendants reside outside of Washington State (in New York and  
3 Georgia), and each has retained counsel.

4           5.       The parties, by and through counsel, stipulate to and jointly request a  
5 continuance of the trial date and motions deadline as set forth herein. For multiple  
6 reasons, including, but not limited to, the nature of the charges and prosecution, the  
7 potential consequences, the possible questions of law and fact, the size, scope, and  
8 technical nature of discovery, and the unusual complexity of the case, as well as the  
9 Coronavirus Disease 2019 (COVID-19), including the Delta and other variants, and  
10 health-related considerations, this continuance and extension of the pretrial motions  
11 deadline are necessary and warranted.

12           6.       This case involves an immense amount of electronic discovery, well  
13 beyond the typical matter. The investigation involved, among other things, searches of  
14 more than 50 email and cloud storage accounts held at various online providers and the  
15 seizure of more than 75 electronic devices, such as computers, tablets, phones, and  
16 storage devices. In total, the government anticipates processing numerous terabytes of  
17 electronic data in this matter. Given the large size, discovery productions are being  
18 conduct on a rolling basis and conveyed to counsel for each defendant on external hard  
19 drives. The United States has provided a substantial amount of data and additional  
20 productions remain forthcoming.

21           7.       Moreover, the discovery contains certain personal information and sensitive  
22 material beyond the typical matter. For instance, the electronic data contains a large  
23 amount of protected information of alleged victims, personally identifiable information  
24 (PII) of individuals, and internal and proprietary company records and information.  
25 Accordingly, the parties required additional time to develop an appropriate discovery  
26 plan and entered into a protective order governing the handling and storage of “Protected  
27 Material,” which the Court approved. That protective order places limitations on the  
28 review and dissemination of “Protected Material,” which, particularly given the current

1 concerns related to COVID-19, necessitates additional time for counsel and the  
2 defendants to review discovery and assess the case accordingly.

3 8. Undersigned defense counsel require additional time to review the  
4 evidence, with their clients, to conduct necessary follow-up investigation, and to retain  
5 and consult with experts, in order to provide effective representation. Further, defense  
6 counsel and the defendants require additional time to conduct factual and legal inquiries  
7 and to determine and consider viable strategies, to include, if appropriate, a possible  
8 negotiated resolution.

9 9. The parties further agree that this case involves serious allegations and  
10 charges, set forth above. For instance, the maximum penalty for wire fraud includes a  
11 term of imprisonment of up to 20 years. Moreover, the government indicates that it  
12 anticipates seeking additional charges in advance of any trial.

13 10. A trial in this case likely would span multiple weeks and include multiple  
14 hundreds of exhibits and the testimony of dozens of fact and expert witnesses. The  
15 United States anticipates the prosecution evidence would include representatives of  
16 Amazon and various online service providers, foreign witnesses, and expert testimony  
17 regarding multiple topics, including forensic analyses of computer and other electronic  
18 evidence, among other things. After reviewing discovery and conducting its own  
19 investigation, the defense likewise may present similar evidence at a trial. Further, the  
20 parties agree that such a trial, particularly with multiple defendants, would present  
21 challenges given the current health-related considerations related to COVID-19.

22 11. Given the circumstances, including the charges, the complexity of the case,  
23 the technical nature and size of discovery, the foreseeable trial evidence, and the potential  
24 consequences of conviction, a continuance is warranted and necessary in this case.

25 12. After consultation regarding respective conflicts, undersigned counsel and  
26 the parties are all available for trial in Seattle in early September and October 2022, and  
27 dates thereafter.

14. Undersigned defense counsel have discussed with their client the proposed continuance and her rights under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.* The defendant agrees with this course and has executed a waiver through October 2022.

16. The investigation also involves evidence located in a foreign country sought by an official request. Accordingly, a continuance is further warranted under U.S.C. § 3161(h)(8).

## II. CONCLUSION

3 Defendant Rosenberg and his counsel are unavailable from September 26 through October 18, 2022, in light of multiple religious holidays during that period.

1 It is further requested that the Court find, for the purpose of computing the time  
 2 limitations imposed by the Speedy Trial Act, that the period of delay from the date of the  
 3 filing of this motion until the new trial date is excludable pursuant to 18 U.S.C.  
 4 § 3161(h)(7)(A) and (h)(7)(B)(i),(ii), and (iv).

5 Therefore, the parties ask that the trial date be continued until at least September  
 6 2022, with a preference for October 25, 2022, or thereabouts as the court has availability.

7 The parties further ask that the deadline to file pretrial motions be reset to a date at  
 8 least three (3) months prior to the rescheduled trial date. The parties further request and  
 9 propose that any pretrial motion be noted for consideration on the third Friday thereafter,  
 10 with responses thereto due no later than fourteen (14) days after filing of motions.

11 DATED this 13th day of October, 2021.

12 Respectfully submitted,

13 NICHOLAS W. BROWN  
 14 United States Attorney

15 *s/ Steven Masada*

16 *s/ Nicholas Manheim*

17 STEVEN MASADA  
 18 NICHOLAS MANHEIM  
 19 Assistant United States Attorneys  
 United States Attorney's Office

20 So Stipulated:

21 *s/ Jacob Laufer (by email auth.)*  
 22 JACOB LAUFER, *pro hac vice*  
 23 PETER OFFENBECHER  
 Counsel for EPHRAIM ROSENBERG

*s/ Jess Johnson (by email auth.)*  
 JESS JOHNSON, *pro hac vice*  
 MICHAEL NANCE  
 Counsel for HADIS NUHANOVIC

24 *s/ Justine Harris (by email auth.)*  
 25 JUSTINE HARRIS, *pro hac vice*  
 26 ROBERT FLENNAUGH  
 27 Counsel for JOSEPH NILSEN

*s/ Kathleen Cassidy (by email auth.)*  
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